

STATE OF MICHIGAN
COURT OF APPEALS

LARRY T. GOODMAN, Personal Representative
of the Estate of AKIL JELANI GOODMAN,

Plaintiff-Appellant,

v

1012, INC., d/b/a THE BEACH HOUSE,

Defendant/Cross-Plaintiff/Appellee,

and

CHANTANTUS FRANKLIN,

Defendant/Cross-Defendant.

DAVID WASHINGTON,

Plaintiff-Appellant,

v

1012, INC., d/b/a THE BEACH HOUSE,

Defendant/Cross-Plaintiff/Appellee,

and

CHANTANTUS FRANKLIN,

Defendant/Cross-Defendant.

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

Servitto, J. (*concurring in part, dissenting in part*).

UNPUBLISHED
May 19, 2011

No. 296348
Genesee Circuit Court
LC No. 08-089183-NO

No. 296349
Genesee Circuit Court
LC No. 08-088646-NO

Because I believe there was, at a minimum, a question of fact as to whether defendant was negligent for not contacting the police after becoming aware that Franklin had threatened to obtain a gun shortly before the shooting, I respectfully dissent.

The evidence in this case indicated that Franklin was present while his friend, Williams, was engaged in an argument with Goodman inside the club. As a result of the argument, Franklin, Williams, Goodman, and another individual, Dionco Whiteside, were escorted out of the club. Plaintiff presented evidence that Franklin, while being escorted outside the club, threatened to “pop” or shoot somebody. While it is true that Franklin did not threaten anyone by name, the timing of the threat and the circumstances surrounding the threat suggests a question of fact concerning whether there was a risk of imminent and foreseeable harm to an identifiable invitee. Because Franklin made the alleged threat while being escorted outside by one of defendant’s bouncers, one could determine that the threat was directed toward those whom Franklin felt were responsible for his expulsion. Based on the evidence, one could deduce that this alleged threat was directed at Goodman and/or defendant’s bouncer(s). Goodman, in fact, was a victim of the shooting. I would thus conclude that a question of fact existed as to whether there was a risk of imminent and foreseeable harm to an identifiable invitee thereby giving rise to a duty on defendant’s part to act. I would find that the trial court erred in dismissing plaintiffs’ negligence claims. I agree with the majority’s conclusions in all other respects.

/s/ Deborah A. Servitto